

# **EXHIBIT 5**

**CONFIDENTIAL**  
**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

In re: )  
)  
SECURITIES INVESTOR )  
PROTECTION CORPORATION, )  
)  
Plaintiff-Applicant, )  
)  
vs. ) 08-01789 (SMB)  
)  
BERNARD L. MADOFF )  
INVESTMENT SECURITIES, LLC, )  
)  
Defendant. )  
)  
)  
In re: )  
)  
BERNARD L. MADOFF, )  
)  
Debtor. )  
)

Videotaped Deposition of BERNARD L.  
MADOFF, VOLUME I, taken on behalf of the Customers,  
before K. Denise Neal, Registered Professional  
Reporter and Notary Public, at the Federal  
Correctional Institution, 3000 Old Highway 75,  
Butner, North Carolina, on the 26th day of April,  
2017, commencing at 9:07 a.m.

\* \* \* \* \*

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1 complete truth about what happened?

2 A. Yes.

3 Q. Since that time have you ever been  
4 dishonest when you testified about what happened?

5 A. No.

6 Q. Now, as I just mentioned, you've testified  
7 previously about the four families who had been your  
8 clients from the 1960s on. And, again, I don't want  
9 you to mention the names of any of those four  
10 families, but I just want to ask you a question.

11 Was there a period prior to 1990 when Annette  
12 Bongiorno backdated trades from members of the four  
13 families?

14 A. Yes.

15 Q. Was that done without the knowledge of the  
16 members of the four families?

17 A. No. They were aware of it. They had  
18 instructed her to do it.

19 Q. They instructed her to backdate trades?

20 A. Yes.

21 MS. CHAITMAN: Okay.

22 MR. SHEEHAN: Excuse me. What time period  
23 was that?

24 MS. CHAITMAN: Before the 1990s.

25 MR. SHEEHAN: Okay.

1           A. Sometime post-'92. As I started, you know,  
2 I was still buying it in '92 and also through most  
3 of '93. After that, that's when I stopped buying  
4 securities for split strike.

5           Q. Okay. Now, you continued to have some  
6 customers who were in convertible arbitrage?

7           A. Correct.

8           Q. Did you continue so long as people were in  
9 convertible arbitrage, did you actually buy those  
10 securities?

11          A. Yes.

12          Q. Okay. So it was only in the split strike  
13 that you stopped buying the securities?

14          A. Correct.

15          Q. Okay. Do you derive any kind of benefit  
16 from your testimony as to when the fraud started?

17          A. No.

18          Q. Does it benefit anyone in your family?

19          A. No.

20          Q. If the Trustee claims you're lying as to  
21 when the fraud started, is there any conceivable  
22 benefit that you enjoy by virtue of that testimony?

23          A. No.

24          Q. Does this testimony benefit any of your  
25 family members?

1 A. No.

2 Q. Now, you testified that at some point in  
3 1992 you leased the 17th floor of the Lipstick  
4 Building?

5 A. Yes.

6 Q. And you bought a separate computer system  
7 for the people you moved to the 17th floor; is that  
8 right?

9 A. Correct.

10 Q. And that was called the IBM AS/400?

11 A. Yes.

12 Q. Now, was the IBM AS/400 on the 17th floor  
13 linked to outside sources, like other investment  
14 firms or DTC?

15 A. No.

16 Q. Now, the computers that were used on the  
17 18th and the 19th floors by the traders --

18 A. Right.

19 Q. -- were those Bloomberg terminals?

20 A. Well, we have Bloomberg terminals all over  
21 the firm, yes.

22 Q. Okay. Were the Bloomberg terminals linked  
23 to outside sources?

24 A. Yes.

25 Q. What outside sources were they linked to?

1           A. I can't probably tell you all of them, but  
2           they -- Bloomberg generally is linked to --  
3           basically, Bloomberg terminal gets information from  
4           other information providers. They're also -- I'm  
5           not sure, but they're also linked to probably the  
6           depositories as well. They're not linked to other  
7           brokerage firms.

8           Q. Okay. Now, when you testified that Annette  
9           Bongiorno prior to 1990 had backdated trades for the  
10          four families, were those carried out on the AS/400?

11          A. Yes.

12          Q. Okay. But before -- before you bought the  
13          AS/400 in 1992, what kind of computer was she using  
14          that she would backdate trades?

15          A. We had other small like, you know,  
16          computers, what you would call them, just like, you  
17          know, what you would use at home, you know, word  
18          processors and, you know, NASDAQ terminals and  
19          things of that sort.

20          Q. They were not linked to outside sources?

21          A. No. They were not linked, right.

22          Q. Now, was it -- you testified last time, and  
23          correct me if my recollection is incorrect, but I  
24          think what you testified last time is that it was  
25          not illegal for you to sell short?



1 I wasn't buying.

2 Q. Right. Now, in late 1993 or early 1994 was  
3 your business, you were operating at that point as a  
4 sole proprietorship; is that right?

5 A. Yes.

6 Q. Was your business insolvent?

7 A. No.

8 Q. At what point in time did you become  
9 insolvent? And when I say you, I mean your sole  
10 proprietorship or the limited liability company.

11 A. I would say probably in the early 2000s,  
12 maybe somewhere between let's say '98 and 2002.

13 Q. Okay. And what --

14 MR. SHEEHAN: Can I just -- before you get  
15 an answer, two things. One is I don't know what  
16 insolvency means.

17 MS. CHAITMAN: Oh, okay.

18 MR. SHEEHAN: I'm going to ask to define  
19 that.

20 MS. CHAITMAN: Okay.

21 MR. SHEEHAN: And I'm not going to  
22 interrupt you again because I'm just going to have a  
23 continuing objection to leading questions, which is  
24 you're testifying more than he is, but I don't care  
25 about that. Just objecting. All right.

1 Q. (By Ms. Chaitman) Okay, okay. When you  
2 say that your business became insolvent at some  
3 point between '98 and what did you say? 2000 --

4 A. 2002.

5 Q. Okay. What are the events that you're  
6 thinking about that --

7 A. Well, because I was also returning -- there  
8 were client -- part of the strategy was to return  
9 profits that were earned to clients. So in order to  
10 do that, I was returning money from the 703 account  
11 to clients and, therefore, I wasn't able to buy  
12 either the securities or the treasuries. So there  
13 was a deficit.

14 So because that wasn't reflecting the  
15 liabilities and I didn't have assets to back them up  
16 at some point, I would say that would be -- the firm  
17 would be insolvent.

18 Q. Okay. So would it be fair to say that the  
19 insolvency arose from the differential between what  
20 the investment advisory customers' money was earning  
21 in Treasury bills versus the return you were paying  
22 them?

23 A. Correct.

24 Q. Did your formation of the limited liability  
25 company in -- it became effective January 2001, did

1 the customer is requesting to be able to purchase  
2 securities. The brokerage firm also has to deliver  
3 securities if the firm that he sold it to for the  
4 customer who needs delivery.

5 So he has to go out and borrow securities.  
6 And to borrow the securities to make the delivery,  
7 he has to -- he has to borrow them from another  
8 brokerage firm. He has to pay them for those  
9 securities. So the only -- the only securities that  
10 are segregated for a customer are what's called  
11 fully paid for securities where there is no  
12 liability or debt involved in the firm.

13 Q. Okay. Now, you've explained that the fraud  
14 was in the split strike, but if you had an  
15 investment advisory customer who instructed you to  
16 buy a specific position for them and you gave them a  
17 margin loan to do that, did you actually execute  
18 those sales?

19 A. We always execute the sales. Whatever was  
20 reflected on the customer statement, we executed.  
21 We executed the sales to the customer. You know, we  
22 wouldn't have executed them in the market unless we  
23 were doing a strategy, unless we were also buying  
24 securities.

25 Q. Okay. But where a customer made a specific

1 instruction to you to buy a specific stock, are you  
2 saying that you always executed those instructions?

3 A. The customer didn't usually give us  
4 instructions. These accounts are handled basically  
5 as sort of discretionary accounts. So once the  
6 customer opened the account to go into this  
7 particular strategy, the firm had the -- had the,  
8 you know, allowance to be able to execute the  
9 strategy whenever he saw fit.

10 Q. No, but I'm thinking of customers who were  
11 not in split strike, investment advisory customers  
12 who had you as their investment advisor but they  
13 instructed you as to what stocks to buy and sell.

14 A. We didn't -- we basically did not do that  
15 kind of business.

16 Q. Now, in the government's deferred  
17 prosecution agreement with JPMorgan Chase, the  
18 government and the bank stipulated that during the  
19 period from 2003 to 2008 you maintained on deposit  
20 at JPMorgan Chase three to six billion dollars. Is  
21 that correct?

22 A. Yes.

23 Q. Did that amount -- was that only between  
24 2003 or 2008 or had you done that earlier than 2003?

25 A. Well, there were certain -- we started

1 part the monies in those accounts built and became,  
2 you know, more and more up to the maximum, which  
3 was, I think, \$500 million pretty much in each  
4 account.

5 Q. So you maintained 500 million of Treasury  
6 securities at each of those five firms?

7 A. Pretty much, yes.

8 Q. Okay. And then in addition you had the  
9 portfolio that was purchased directly --

10 A. Correct.

11 Q. -- by the 17th floor people?

12 A. Right.

13 Q. Now, the market making and proprietary  
14 trading people were buying and selling securities;  
15 right?

16 A. Yes.

17 Q. And what kind of records were kept of the  
18 securities that were held by the firm as of say  
19 month end of each month? Was there a record kept of  
20 an inventory of securities that were owned by the  
21 firm as of the end of each month?

22 A. That the firm was long you're talking  
23 about?

24 Q. Yes.

25 A. Yeah. That was -- you know, you were

1 required to -- you had trading ledgers that  
2 reflected what was long by the market makers or the  
3 proprietary traders in the firm's investment  
4 account. There were trading ledgers and then there  
5 were -- there's what's called a securities record,  
6 stock record.

7 Q. Is it called a trade blotter?

8 A. There's trade blotters, yes.

9 Q. Is that the same thing?

10 A. Same thing.

11 Q. Okay. So if I -- if I --

12 A. Trade blotters basically reflect also  
13 monies -- monies in and monies out for the payment  
14 of the securities. The trading ledgers just shows  
15 the inventory long and short, and same for the stock  
16 record. Stock record would reflect where the  
17 securities are held.

18 Q. Okay. So I just want to get the terms.  
19 There are trade blotters?

20 A. Trading ledgers.

21 Q. And it's called a trading ledger?

22 A. Correct.

23 Q. Okay.

24 A. You know, which would -- trading ledgers  
25 would be for the market making, proprietary trading

1 and the investment account, investment ledger.

2 Q. Okay.

3 A. And then there's what's known as a stock  
4 record, which breaks down by each security.

5 Q. So each of those reports was done as of  
6 month end?

7 A. Daily.

8 Q. They were done daily?

9 A. The reports were effected daily.

10 Q. Okay. And did you -- through  
11 December 11th, 2008 did you maintain those records?

12 A. Yes.

13 Q. So they should have been there for the  
14 Trustee when he took over?

15 A. They would be, yeah.

16 Q. Okay. And were they all electronic records  
17 or were they paper records?

18 A. No. They were -- well, they were all done  
19 through computers.

20 Q. Okay. Who was responsible within the firm  
21 for generating these reports?

22 A. Well, depends upon, you know, where they  
23 were executed. Basically, Dan Bonventry was the  
24 operations director, so he had the final  
25 responsibility. The records themselves were

1 generated by the systems people. And depending upon  
2 whether it was generated by the Stratus system,  
3 which handled basically all the -- all the market  
4 making, proprietary trading side of the firm, or  
5 whether it was done by the investment advisory side,  
6 that would have been through the AS/400.

7 Q. Okay. But the investment advisory side  
8 would show -- would it show securities that actually  
9 hadn't been purchased? In other words, the split  
10 strike securities that weren't purchased, would  
11 they -- would that be listed on that report?

12 A. That's correct.

13 Q. Okay. So that's the trading ledger?

14 A. Right.

15 Q. Okay. So --

16 A. It would be -- it would be the customer  
17 ledger. There's a customer ledger.

18 Q. There's a customer ledger. So if I wanted  
19 to get an accurate picture of what securities the  
20 firm actually held as of any given day, what would  
21 be the best document to look at?

22 A. You would have to look at the -- the  
23 trading ledgers.

24 Q. The trading ledgers. Okay. Now, at  
25 JPMorgan Chase did you have an account or accounts



1 for the customers in? All right. So he would pick  
2 out a security that we were trading and he would  
3 give him the correct formula. Once they got that  
4 formula, that scrap of paper, the next step would be  
5 to go and search our trading records, which would be  
6 what the market maker or the firm's investment  
7 account bought and sold over a period of let's say  
8 for four days.

9 And then they would -- he would by running  
10 a run of what we bought and sold, then Annette or  
11 Jodi, not David, you know, Annette or Jodi would  
12 look through the trading records and pick out a  
13 certain number of shares in stock and they would  
14 come up with an average price and the appropriate  
15 number of shares.

16 All right. So this David Kugel had no  
17 access to any of those records. He wouldn't be able  
18 to do that. He was just giving them -- he was just  
19 giving them what the correct formula would be.

20 So by -- for some reason the Trustee, all  
21 right, because he had this piece of paper which they  
22 showed me when they first came down here years ago  
23 and asked me what it was, I told them it was a  
24 formula, exactly what I just said. They determined  
25 from that that David was generating the trade and

1 get an outline out, but it will take just a second.

2 EXAMINATION

3 BY MR. SHEEHAN:

4 Q. Mr. Madoff, before we get started, I just  
5 want to ask you a question that wasn't quite asked  
6 the way I wanted it to be. That is, are you on any  
7 medications that would impair your ability to  
8 testify here today?

9 A. No, no.

10 Q. Okay. That's not particularized towards  
11 you. It's asked at every deposition.

12 A. Yeah. No. I understand.

13 Q. Because people do take medications that  
14 sometimes doesn't render --

15 A. No. I'm on lots of medication, but nothing  
16 that would impair my --

17 Q. Okay. All right. Just so you and I agree  
18 on that. Okay. Let me sort of go back over some of  
19 the testimony --

20 A. Right.

21 Q. -- this afternoon before we get into some  
22 other stuff I want to talk about. On November 30,  
23 2008 your customer statements showed you to be owed  
24 your customers \$64.6 billion, thereabouts; right?

25 A. Right.

1 Q. And when the Trustee looked at all of your  
2 bank accounts and stock they had available at that  
3 point, you had a little over 300 million left?

4 A. Right.

5 Q. So in the course of -- you're kind of  
6 short, yeah, like 64.3 billion dollars; right?

7 A. Right.

8 Q. Are you saying that that disappeared over  
9 -- that you actually could have covered everybody  
10 prior to 2002?

11 A. No, no.

12 Q. Okay. So what you did do, though, is that  
13 in 2008 according to our calculations you actually  
14 paid redemptions of close to \$12 billion?

15 A. Uh-huh.

16 Q. About 11.7, I think, is what it was?

17 A. Right.

18 Q. Does that sound accurate to you?

19 A. I guess so, yeah.

20 Q. So there was a lot of money going out  
21 during 2008; right?

22 A. Right.

23 Q. But it wasn't anywhere near \$64 billion --

24 A. No.

25 Q. -- that you said you were long?

1 A. No.

2 Q. And is it your testimony that that \$64  
3 billion shortfall occurred from 1992 through 2008?

4 A. Yeah.

5 Q. All right. Do you know what at the end of  
6 1992 you showed on your books and records assuming  
7 all trading is as you say it was, what was on your  
8 books and records then as what you were -- you  
9 yourself were long?

10 A. Well, first of all, you have to understand  
11 that the -- there was -- the losses that I incurred  
12 from the short positions of the big four accounts,  
13 all right, that occurred from the 1987 through 1992  
14 when the market had recovered from the crash in  
15 1987. That was -- that was substantial. That could  
16 have been, you know, as I said, I don't know how  
17 many billions of dollars it was at the time; but you  
18 have to take that into consideration, you know.

19 Q. Right.

20 A. So, you know, the \$64 billion, don't  
21 forget, is -- the reason that number got so large  
22 was that I was generating falsely like 12 percent  
23 return on all the -- on the principal money that was  
24 invested. Let's say the total of almost  
25 \$19 billion, you know, at 12 percent return from